

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2003-218-S - ORDER NO. 2004-203

APRIL 16, 2004

IN RE: Application of Midlands Utility, Inc. for)	ORDER
Approval of a Pending Contract with)	DISAPPROVING
Richland County for Bulk Service Collection)	CONTRACT
from the Raintree Sewage Collection Facility)	
Located in Richland County, South Carolina.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) pursuant to S.C. Code Ann. Section 58-5-210(1976) and 26 S.C. Code Regs. 103-503 and 103-541 (Supp. 2003) by way of an Application filed by Midlands Utility, Inc. (Midlands) on July 3, 2003, for approval by this Commission of a contract with Richland County (Richland) for the bulk service collection of sewage from Midlands' Raintree Sewage Collection Facility. The primary issue for consideration by this Commission is whether the proposed contract is in the public interest.

Midlands was represented by Scott Elliott, Esquire and Charles Cook, Esquire and presented testimony from its President Keith G. Parnell. The Consumer Advocate intervened in this matter and was represented by Elliott F. Elam, Jr., Esquire. The Commission Staff was represented by F. David Butler, General Counsel and presented testimony, under subpoena, of Mr. Jeffrey deBessonnet of the South Carolina Department of Health and Environmental Control (DHEC).

Two public witnesses appeared before the Commission on this matter. Ms. Susan Elwood and Ms. Gail Flowers are both residents of the Raintree subdivision. Both voiced objections to a substantial increase in the sewage rates they are currently paying.

Findings of Fact

1. Midlands is a closely held South Carolina Corporation which owns and operates wastewater treatment facilities and sewer facilities in Fairfield, Lexington, Orangeburg, and Richland Counties. Midlands serves approximately 317 residents in and near the Raintree subdivision in Richland County.

2. Midlands is a public utility as defined in S.C. Code Ann. Section 58-5-10(3) and is subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. Section 58-5-210.

3. The South Carolina Department of Health and Environmental Control (DHEC) has authority over Midlands in that it regulates the wastewater discharges from the Raintree sewage collection facility through the issuance to Midlands of National Pollutant Discharge Elimination Systems Permits ("NPDES Permits") pursuant to the Central Midlands Council of Governments (COG) wastewater treatment management plan (herein the "208 Plan"). The COG is authorized pursuant to Section 1288 of the Federal Water Pollution Control Act (33 U.S.C.A. Sec. 1251; the "Clean Water Act") to prepare the 208 Plan which is an area-wide waste treatment management plan. The COG's 208 Plan includes area served by Midlands' Raintree facility.

4. In accordance with the provisions of the 208 Plan, Midlands was ordered by DHEC, under DHEC Order No. 03-043-W, to enter into a contract with Richland

County to connect the Raintree sewage collection facility to Richland County's wastewater treatment facility. The contract demanded by the DHEC Order, however, is subject to the approval of this Commission.

5. Under the DHEC Order, Midlands negotiated a contract with Richland County. The terms of that contract require the payment of a \$2,200 tap fee for each of the 317 residents of Raintree to be paid to Richland County for a total cost of \$697,000. Richland County proposes to finance this fee over a twenty-year period at an annual interest rate of six and one-half percent (6½%). In addition to this cost, Midlands estimates an additional cost of \$75,000 to connect the present Raintree collection system to Richland County. Richland's operation and maintenance fee will be set at \$2.85/1000 gallons per month.

6. We find that based on the above stated fees as provided in the Contract, and Midlands' collection only residential sewer charge established by Commission Order No. 2002-138 in Docket No. 2001-380-S, that the estimated average charges for Raintree residents would increase from its current \$26.70 to \$51.34 per month. This represents a 92.3% increase in rates.

7. We find that Midlands' estimated cost to upgrade the Raintree facility to DEHC standards is approximately \$400,000. When total costs to include Midlands' expenses, interest cost, depreciation, and construction are complete, Midlands estimates that the monthly sewer charges to their customers in Raintree will rise from the current \$26.70 per month to an estimated \$39.51 per month or a 48% increase in rates.

8. We further find that DHEC Order 03-043-W provides that should this Commission disapprove the Contract between Midlands and Richland County that Midlands will be required to seek a permit from DHEC to upgrade the Raintree sewage collection facility and that Midlands complete construction of the upgrade within two hundred forty (240) days of the denial of this Commission.

9. We find that that the testimony reveals that it is in the public interest of the affected customers, and in agreement with the positions of both the Company and the Consumer Advocate, that the Commission disapprove the contract between Midlands and Richland County for bulk service collection from the Raintree sewage collection facility.

10. We finally find that the disapproval of the contract in no way authorizes, entitles, or guarantees Midlands an increase or change in the rates and fees charged its customers in Raintree and that the Company must request any such increase in a future proceeding before this Commission.

Conclusions of Law

1. We conclude that Midlands is a public utility as defined by S.C. Code Ann. Section 58-5-10(3) and is subject to the jurisdiction of this Commission pursuant to S.C. Code Ann. Section 58-5-210.

2. We conclude that this matter was referred to this Commission by Order of the South Carolina DHEC (Order No. 03-043-W) based on DHEC's ruling that Midlands had violated provisions of the Pollution Control Act, S.C. Code Ann. Sections 48-1-10 et seq. (1987 & Supp. 2003).

3. We conclude that under the DHEC Order that Midlands was required to file with this Commission, for its approval, a contract for sewer service with the regional sewer provider, Richland County. Under the aforesaid Order, Midlands filed a proposed contract between itself and Richland County with this Commission, which is the subject of this action, on July 8, 2003.

4. We further conclude that the DHEC Order provides for a contingency in the case of this Commission disapproving the submitted contract with Richland County. This contingency requires Midlands to submit to DHEC, within sixty days of the issuance of this Order, plans, specifications and an application for a permit to construct upgrades to the Raintree wastewater treatment facility to meet permitted discharge limits.

5. We conclude that based on the provisions of the DHEC Order and the evidence and testimony presented before this Commission in this matter that it is in the public interest for this Commission to disapprove the proposed Contract. Under the DHEC Order, Midlands may petition DHEC for the appropriate authority and permits to upgrade the Raintree sewage collection facility. Based on the testimony and evidence presented to this Commission, that course of action is the most cost effective method of providing the Raintree residents with continued sewer service.

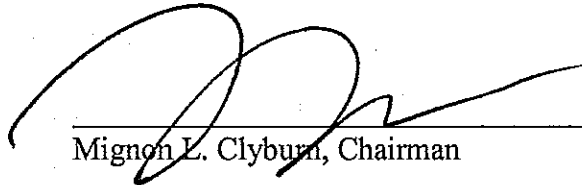
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That the contract between Midlands and Richland County is disapproved.
2. That Midlands comply with the terms, conditions, and timelines provided in DHEC Order No. 03-43-W to submit any requisite applications, requests, plans and

specifications to DHEC for construction upgrades to the Raintree wastewater treatment facility to meet permitted discharge limits.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Executive Director

(SEAL)